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January 9, 2018

VIA ECF

The Honorable Steven I. Locke
United States Magistrate Judge
United States District Court for
the Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: Cecil Thomas et al. v. TXX Services, Inc. et al.
U.S.D.C., E.D.N.Y. Civil Action No. 2:13-CV-02789- SIL

Dear Magistrate Judge Locke:

We represent Defendants TXX Services, Inc. and Patricia Hunt (collectively, “Defendants”) in connection with the above-referenced action. We respectfully seek the Court’s guidance regarding the application of Your Honor’s Individual Motion Practices (“Individual Rules”). Specifically, the inquiry relates to the applicability of Individual Rules Section 4.A relating to Discovery or Other Non-Dispositive Motions, and Section 4.B relating to Motions on Notice, such as motions to dismiss, in connection with a Motion to be filed by Defendants.

By way of background, the Court ordered in its November 29, 2017 Civil Conference Minute Order [Dkt. 235] (“Order”) in connection with this action the following:

Defendants’ motion to dismiss Plaintiffs Popocol and Desnoes, DE [230], from this case, or for a court order directing these Plaintiffs to respond to discovery, is granted in part and denied as part as follows for the reasons set forth on the record. These Plaintiffs will respond to the outstanding discovery requests on or before December 13, 2017. Plaintiffs are warned that a failure to respond may result in a dismissal of their FLSA claims pursuant to Fed. R. Civ. P. 41.

Ms. Popocol and Mr. Desnoes have not complied with the Order even though, as counsel for Plaintiffs notified the Court at the November 29, 2017 Conference, Ms. Popocol contacted their office follow the filing of Defendants’ Letter Motion to Dismiss, dated November 21, 2017 [Dkt. 130].

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Accordingly, Defendants seek to move to dismiss, with prejudice, the claims asserted in this action under the Fair Labor Standards Act (“FLSA”) by Ms. Popocol and Mr. Desnoes. Defendants also seek to move to dismiss the claims asserted by Ms. Popocol and Mr. Desnoes under the New York Labor Law (“NYLL”), based on the above-mentioned facts and case law authority from the U.S. District Court for the Northern District of New York. In the alternative, Defendants would respectfully seek the Court’s issuance of an order warning Ms. Popocol and Mr. Desnoes that if they fail to comply with the Court’s mandate under that order, their claims under the NYLL will be dismissed as well.

Efforts to meet and confer with opposing counsel on these issues have been conducted.

For these reasons, we respectfully request the Court’s guidance on the interpretation of Sections 4.A and 4.B of the Individual Rules in this context so Defendants are aware of whether they should file a Letter Motion under Section 4.A or a Motion on Notice under Section 4.B.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Jeffrey W. Pagano

Jeffrey W. Pagano

cc (via ecf): D. Schulman, Esq.
M. Kirschenbaum, Esq.
I. Saxe, Esq.